

In the Matter of CITY AUTO STAMPING COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, AFFILIATED WITH THE C. I. O.

In the Matter of THE CITY AUTO STAMPING COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL No. 11, A. F. L.

Cases Nos. R-1531 and R-1532, respectively.—Decided October 11, 1939

Auto Parts Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees; controversy concerning appropriate unit; rival organizations—*Contract:* amendable on 30 days' notice, no bar to determination of representatives—*Unit Appropriate for Collective Bargaining:* all employees of the company, including group leaders, but excluding foremen, assistant foremen, and clerical employees—*Election Ordered:* eligibility to vote extended to employees on seniority list at date of Direction, who worked for company during 9-month period preceding said date, exclusive of general layoffs or shut-downs.

Mr. Bernard R. Bralove, for the Board.

Mr. John W. Hackett, Mr. Edwin J. Lynch, Mr. Luther Kent, Mr. Alfred Davis, Mr. Kenneth Scott, and Mr. Raymond Lothridge, of Toledo, Ohio, for Local No. 11.

Mr. Edward Lamb, Mr. Lowell Goerlich, Mr. Ellsworth Kramer, Mr. Frank McLaughlin, Mr. J. H. Gerighty, Mr. F. R. Brown, and Mr. J. Penn, of Toledo, Ohio, for Local No. 12.

Mr. Erwin R. Effler, of Toledo, Ohio, for the Company:

Mr. Woodrow J. Sandler, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On May 6, 1939, International Union, United Automobile Workers of America, affiliated with the C. I. O.,¹ herein called Local No. 12, filed with the Regional Director for the Eighth Region (Cleveland,

¹ The petition was signed "International Union, United Automobile Workers of America, Affiliated with the C. I. O." It is apparent from the record, however, that it is Local No. 12, International Union, United Automobile Workers of America, affiliated with the C. I. O., which desires certification.

Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of City Auto Stamping Company, Toledo, Ohio, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 14, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act, and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On August 14, 1939, International Union, United Automobile Workers of America, Local No. 11, A. F. of L., herein called Local No. 11, filed with the Regional Director a petition alleging that a question affecting commerce had arisen concerning the representation of employees of the Company and requesting an investigation and certification of representatives, pursuant to Section 9 (c) of the Act. On August 19, 1939, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On the same day, the Board, pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, issued an order consolidating the two proceedings for the purpose of hearing and for all other purposes.

On August 18 and 19, 1939, the Regional Director issued notices of hearing and consolidation, copies of which were served upon the Company, Local No. 12, and Local No. 11, and upon Metal Polishers, Buffers, Platers & Helpers International Union, Local No. 2, affiliated with the A. F. of L., herein called the Polishers' Union, and Mechanics Educational Society of America, herein called the M. E. S. A., the latter two being labor organizations claiming to represent employees directly affected by the investigations.

Pursuant to notice, a hearing was held at Toledo, Ohio, on August 24 and 25, 1939, before William B. Barton, the Trial Examiner duly designated by the Board. The Polishers' Union did not appear at the hearing or participate therein. A representative of the M. E. S. A. was present at the hearing but did not participate therein. The Board, the Company, Local No. 12, and Local No. 11 were represented by counsel and participated in the hearing. The Company appeared specially and claimed that it was not engaged in interstate commerce and that therefore the Board lacked jurisdiction over it. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded

all parties. During the course of the hearing, the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Pursuant to leave granted by the Board to all parties, Local No. 12 and Local No. 11 filed briefs, which the Board has considered.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

City Auto Stamping Company is an Ohio corporation engaged in the manufacture of automobile body stamping, such as fenders, radiator shells, and truck cabs. Its factory and principal office are located in Toledo, Ohio.

The principal raw material purchased by the Company is sheet steel. During the year 1938 the approximate total value of sheet steel purchased by the Company was \$400,000. In that year, the Company purchased 71 per cent of the steel used by it in States other than the State of Ohio. During the same year, the total value of the Company's finished products was \$1,300,000. Approximately 88 per cent of its products were shipped to customers outside the State of Ohio.

II. THE ORGANIZATIONS INVOLVED

Local No. 12 is a labor organization chartered by International Union, United Automobile Workers of America, affiliated with the Congress of Industrial Organizations, admitting to membership all employees of the Company excluding clerical employees and those having the power to hire or discharge. Local No. 12 admits foremen and assistant foremen to associate membership.

Local No. 11 is a labor organization, chartered by International Union, United Automobile Workers of America, affiliated with the American Federation of Labor, admitting to membership all employees of the Company excluding clerical and supervisory employees. Local No. 11 admits assistant foremen and group leaders to full membership, but admits foremen to associate membership only.

III. THE QUESTION CONCERNING REPRESENTATION

On August 11, 24, and September 30, 1937, the Board issued its Decision and Direction of Elections, Amendment to Direction of Elections, and Supplemental Decision and Certification of Repre-

sentatives,² respectively, whereby the Board certified Local No. 12 as the exclusive representative for the purposes of collective bargaining of the Company's employees in an appropriate unit consisting of the Company's production employees, exclusive of clerical and supervisory employees.

On November 1, 1937, the Company and Local No. 12 entered into an agreement by which Local No. 12 was recognized by the Company as the exclusive representative of its employees, except those engaged in a clerical or supervisory capacity. By its terms, the agreement was to continue in effect until August 15, 1938, and thereafter until either party should give the other thirty (30) days' notice of its intent to amend it.

Local No. 12 included in its membership employees of others than the Company, and on July 5, 1938, the Company's employees left Local No. 12 and asked for and were granted a separate charter by the International Union as Local No. 11, herein called Local No. 11, U. A. W. A.³ On February 28, 1939, the Company and Local No. 11, U. A. W. A., entered into a supplemental agreement changing the agreement of November 1, 1937, so as to describe the bargaining agent of the Company's employees as Local No. 11, U. A. W. A.

Shortly thereafter, a schism occurred in the ranks of the International Union.⁴ In the Company's plant, Local No. 11, U. A. W. A., was split into two groups, one of which became affiliated with the American Federation of Labor, some time after March 4, 1939, as Local No. 11; and the other of which became reaffiliated with Local No. 12, on May 6, 1939. The Company has throughout maintained an attitude of impartiality and at the time of the hearing was bargaining with both Local No. 11 and Local No. 12, each of which claims to represent a majority of the Company's employees.

As stated above, the agreement of November 1, 1937, as supplemented, was to continue in effect until August 15, 1938, and thereafter until either party should give the other thirty (30) days' notice of its intent to amend it. The Board is not precluded by the

² 3 N. L. R. B. 306.

³ Local No. 11, U. A. W. A., should not be confused with Local No. 11, the petitioning union. The former represented the Company's employees for a short time, after which some of the Company's employees became affiliated with the A. F. of L. as Local No. 11, and the balance became reaffiliated with Local No. 12.

⁴ This schism divided the International Union into two separate labor organizations, one affiliated with the C. I. O. and the other with the A. F. of L. See *Matter of Chrysler Corporation and United Automobile Workers of America, Local 371, affiliated with C. I. O.*, 13 N. L. R. B. 1303; *Matter of Motor Products Corporation and Local 203, International Union, United Automobile Workers of America, affiliated with the C. I. O.*, 13 N. L. R. B. 1320.

agreement from investigating or certifying bargaining representatives for the purposes of collective bargaining.⁵

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

At the hearing, Local No. 12 and Local No. 11 stipulated that the unit appropriate for the purposes of collective bargaining includes all employees of the Company, excluding clerical and supervisory employees, and that foremen and assistant foremen are supervisory employees. The only controversy is as to whether or not group leaders are supervisory employees. Local No. 11 contends that they are not, and should therefore be included in the appropriate unit; Local No. 12 contends that they are supervisors and should therefore be excluded.

The group leaders are production workers, who direct the work of employees under them and, at the same time, work along with them. There is evidence to indicate that the group leaders have minor supervisory functions. However, we are advised by the Regional Director that, according to his records, in the previous election held by the Board among the Company's employees, in which supervisory employees were not permitted to vote,⁶ group leaders were permitted to vote and were not considered supervisory employees. We shall include the group leaders in the unit.

We find that all employees of the Company, including group leaders, but excluding supervisory and clerical employees, foremen, and assistant foremen, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to employees of the Company the full benefit of their right to self-organization and

⁵ See *Matter of Reading Transportation Company and Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America*, 10 N. L. R. B. 15; *Matter of Utica Knitting Company and American Federation of Labor, Local No. 21500*, 8 N. L. R. B. 783.

⁶ 3 N. L. R. B. 306, 310, 313.

to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

Local No. 11 and Local No. 12 each claims to represent a majority of the employees in the appropriate unit. We find that an election by secret ballot is necessary to resolve the question concerning representation.

Local No. 11 contended at the hearing that the Company's pay rolls at or about the time that Local No. 12 filed its petition herein, the pay rolls for the month of April and the first week in May 1939, should be used to determine the eligibility of employees to vote in the election, unless the Board felt that such a period was too remote or that, in view of the fluctuating nature of the Company's employment, eligibility should be determined as of a greater period. During the 12 months prior to the hearing, employment in the Company's plant fluctuated between 187 and 450. To determine eligibility as of such a remote and brief period, therefore, would tend to deprive employees with a substantial interest in the choice of representatives, of a voice in such choice.

Local No. 12 contended that the current seniority list maintained by the Company since 1934 and containing over 1,200 names,⁷ should be used for this purpose. The agreement of November 1, 1937, as supplemented, provides that "any employee who shall not work for a period of nine (9) consecutive months, not including general lay-offs or shut-downs, shall be removed from the seniority list." Although this provision of the agreement has never been enforced, Local No. 11 claims that the parties are bound by it. While the provisions of the agreement are not binding on us, we feel that the 9-month period specified therein, at the end of which the seniority of an employee who has not worked during the period is terminated, is persuasive as to what period of time we should select to insure eligibility to vote to the greatest number of employees having a direct and substantial interest in the choice of representatives, at the same time excluding from such eligibility those whose possibility of reemployment is remote, if not non-existent.

We shall accordingly direct that the employees within the appropriate unit whose names appear upon the Company's current seniority list as of the date of this Decision and Direction of Election, excluding those who did not work for the Company at any time during the 9 consecutive months immediately preceding the date of this Decision and Direction of Election, not including general lay-offs or shut-

⁷ As stated above, the greatest number employed by the Company in the last 12 months prior to the hearing was only 450.

downs, and also excluding those who have since quit or been discharged for cause, shall be eligible to vote in the election.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of City Auto Stamping Company, Toledo, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. All employees of City Auto Stamping Company, including group leaders, but excluding supervisory and clerical employees, foremen, and assistant foremen, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with City Auto Stamping Company, Toledo, Ohio, an election by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among all employees of City Auto Stamping Company, whose names appear on the Company's current seniority list as of the date of this Direction of Election, including group leaders, but excluding those who did not work for the Company at any time during the 9 consecutive months immediately preceding the date of this Direction of Election, not including general lay-offs or shut-downs, those who have since quit or been discharged for cause, and supervisory and clerical employees, foremen, and assistant foremen, to determine whether they desire to be represented by Local No. 12, International Union, United Automobile Workers of America, affiliated with the C. I. O., or by International Union, United Automobile Workers of America, Local No. 11, A. F. of L., for the purposes of collective bargaining, or by neither.